



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- 93709; File No. SR-NSCC-2021-013]

### **Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change to Provide for a Passive Acknowledgment Process, Codify Certain Settlement Processes and Make Technical, Clarifying and Conforming Changes to the NSCC Rules & Procedures**

December 2, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 18, 2021, National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change would amend NSCC’s Rules & Procedures (“Rules”)<sup>3</sup> in order to (i) provide for a passive acknowledgment process whereby any settling bank that does not timely acknowledge that it will settle its settlement balance with NSCC (i.e., acknowledge its intention to pay to or collect from NSCC), or refuse to settle for one or more Members or Limited Members (collectively, “NSCC Members”) or AIP Non-

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Capitalized terms not defined herein are defined in the Rules, available at [https://dtcc.com/~media/Files/Downloads/legal/rules/nscc\\_rules.pdf](https://dtcc.com/~media/Files/Downloads/legal/rules/nscc_rules.pdf).

Member Funds for which it is the designated Settling Bank or AIP Settling Bank (collectively, “NSCC Settling Banks”) and has not otherwise been in contact with NSCC, would be deemed to have acknowledged its settlement balances, (ii) amend the definition of “AIP Settling Bank” to correspond with the definition of “Settling Bank” and remove AIP Settling Bank Only Member as a membership category, (iii) codify certain settlement processes and (iv) make certain technical, clarifying and conforming changes.

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to (i) provide for a passive acknowledgment process whereby any settling bank that does not timely acknowledge that it will settle its settlement balance with NSCC (i.e., acknowledge its intention to pay to or collect from NSCC), or refuse to settle for one or more NSCC Members or AIP Non-Member Funds for which it is the designated NSCC Settling Bank and has not otherwise been in contact with NSCC, would be deemed to have acknowledged its settlement balances, (ii) amend the definition of “AIP Settling Bank” to correspond with the definition of “Settling Bank” and remove AIP Settling Bank Only Member as a

membership category, (iii) codify certain settlement processes and (iv) make certain technical, clarifying and conforming changes.

### **Background**

#### ***NSCC Membership; Settling Banks and AIP Settling Banks – Settlement Processes***

NSCC membership consists of Members that have access to NSCC’s guaranteed central counterparty services and Limited Members that have access to NSCC’s non-guaranteed services, such as Mutual Fund Services and Alternative Investment Product Services (“AIP”).<sup>4</sup> Limited Members that only have access to AIP are referred to as AIP Members.<sup>5</sup> For purposes of this filing, all Members and Limited Members, including AIP Members, are referred to collectively as NSCC Members. AIP Non-Member Funds are entities that are not AIP Members but that NSCC has approved to settle AIP Payments as described in Rule 53.<sup>6</sup>

NSCC provides a standardized, automated method for money settlement obligations, between NSCC and NSCC Settling Banks acting on behalf of NSCC Members and AIP Non-Member Funds. NSCC’s settlement services eliminate manual processing and reduce costs by aggregating the money settlement payments due to or from an NSCC Member or AIP Non-Member Fund, and then, automatically debiting or crediting such NSCC Member’s account or AIP Non-Member Fund’s account at its NSCC Settling Bank. Money settlement is effected via the Federal Reserve Banks’ (“FRB”) National Settlement Service (“NSS”).<sup>7</sup>

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<sup>4</sup> See Section 2 of Rule 2, supra note 3.

<sup>5</sup> Id.

<sup>6</sup> Definition of “AIP Non-Member Fund” in Rule 1, supra note 3.

<sup>7</sup> Section D.2. of Procedure VIII of the Rules (“Procedure VIII”), supra note 3.

NSCC provides two separate settlement processes – (i) end of day settlement for Members and Limited Members other than AIP Members (“EOD Settlement”) and (ii) daily settlement for AIP Members and AIP Non-Member Funds (“AIP Settlement”). Both settlement processes require each NSCC Member or AIP Non-Member Fund to designate a settling bank to effect money settlement on its behalf at NSCC.<sup>8</sup> Settling Banks settle on behalf of Members and Limited Members with respect to EOD Settlement and AIP Settling Banks settle on behalf of AIP Members and AIP Non-Member Funds with respect to AIP Settlement. All AIP money settlement is effected on a gross basis, where on the applicable settlement date, AIP debits are collected first, and in the afternoon all contra-side credits, where the corresponding debits have been collected, are paid.<sup>9</sup>

Each NSCC Settling Bank is required by the NSCC Rules to enter into a settling bank agreement with the NSCC Member or AIP Non-Member Fund on whose behalf it settles and to abide by the Rules.<sup>10</sup> The Rules require Settling Banks to acknowledge to NSCC their settlement balances and their intention to settle with NSCC or their refusal to settle by the settlement deadline.<sup>11</sup> The Rules do not explicitly require AIP Settling Banks to affirmatively acknowledge or refuse to settle, however, since the inception of AIP in 2008, NSCC’s settlement procedures have required AIP Settling Banks to affirmatively acknowledge or refuse to settle in the same manner as required by Settling Banks. On a daily basis, NSCC calculates settlement payment amounts for EOD

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<sup>8</sup> See Section 1 of Rule 12, supra note 3 and Section 7(h) of Rule 53.

<sup>9</sup> See Section 7 of Rule 53, supra, note 3.

<sup>10</sup> Section 1 of Rule 55, supra note 3.

<sup>11</sup> Section D of Procedure VIII, supra note 3. A Settling Bank that is a Member and settles solely for its own accounts may opt to not acknowledge its settlement balance. Id.

Settlement and for AIP Settlement and reports to NSCC Members and their respective NSCC Settling Banks, a settlement balance.<sup>12</sup> Then, through the Fed Funds Settlement system (“FFS”),<sup>13</sup> the Settling Banks and AIP Settling Banks must submit their acknowledgment of their intent to settle or refusal to settle such amounts on behalf of their respective NSCC Members or AIP Non-Member Funds by a deadline established by NSCC.<sup>14</sup> EOD Settlement occurs at the end of the day and, from an operational perspective, is centralized with DTC’s end-of-day money settlement (“DTC Settlement”).<sup>15</sup> For both EOD Settlement and AIP Settlement, if all of the NSCC Settling Banks submit acknowledgments of their intent to settle, then the Settlement Agent will submit the requisite file to the FRB for processing through the NSS.

If an NSCC Settling Bank notifies the Settlement Agent that the NSCC Settling Bank refuses to pay the settlement balance for an NSCC Member or AIP Non-Member

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<sup>12</sup> For EOD Settlement, Settling Banks are provided a net-net debit or net-net credit number. Section 2 of Rule 55, supra note 3. For AIP Settlement, each AIP Settling Bank is provided an aggregate gross debit number and an aggregate gross credit number with respect to each AIP Member or AIP Non-Member Fund on whose behalf it settles because for AIP Settlement, debits and credits are settled separately. Section 7 of Rule 55, supra note 3. For AIP Settlement, the net debts are paid first by AIP Settling Banks at approximately 11 a.m. and then net credits are paid to AIP Settling Banks at approximately 2 p.m. AIP settlement times are posted on NSCC’s website.

<sup>13</sup> Section D of Procedure VIII requires Settling Banks to acknowledge settlement balances via “the terminal system” which is currently FFS. Section D of Procedure VIII, supra note 3.

<sup>14</sup> Section D.1 of Procedure VIII, supra note 3. The Rules do not explicitly require AIP Settling Banks to affirmatively acknowledge or refuse to settle, however, NSCC’s settlement procedures have required AIP Settling Banks to affirmatively acknowledge or refuse to settle in the same manner as required by Settling Banks.

<sup>15</sup> DTC Settlement procedures and timing are set forth in the Settlement Service Guide of DTC (“Settlement Service Guide”) available at <https://www.dtcc.com/~media/Files/Downloads/legal/service-guides/Settlement.pdf>. Because EOD Settlement and DTC Settlement are centralized, the timing and processes for NSCC Settlement are the same as those set forth in the Settlement Service Guide.

Fund, then NSCC will exclude that NSCC Member's or AIP Non-Member Fund's amount and the Settlement Agent will provide the NSCC Settling Bank with a new settlement balance that no longer includes the excluded amount. The NSCC Settling Bank must then immediately send a message to the Settlement Agent acknowledging the new amount.<sup>16</sup> The Settlement Agent will then submit the requisite file to the FRB for processing through the NSS.

If a Settling Bank does not acknowledge or refuse by the settlement acknowledgment deadline, the Settlement Agent will use the most recent contact information available to contact the NSCC Settling Bank. If the Settlement Agent is unable to contact the NSCC Settling Bank or does not receive a response from the NSCC Settling Bank as to the acknowledgment or refusal, NSCC needs to determine whether to request an NSS extension while also determining whether to remove the Settling Bank's settlement balance from the NSS file.

Today, failure of an NSCC Settling Bank to timely respond to the Settlement Agent by the settlement acknowledgment deadline could create uncertainty with respect to timely completion of settlement at NSCC. This is because today, NSCC is not permitted under the Rules and its settlement procedures<sup>17</sup> to submit the NSS file (through the Settlement Agent) unless all NSCC Settling Banks in the file that are required to acknowledge,<sup>18</sup> have acknowledged. NSCC must therefore determine whether it should

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<sup>16</sup> Section D.1 of Procedure VIII, supra note 3. The Rules do not explicitly require acknowledgment of the new settlement balance for AIP Settling Banks, however, since the inception of AIP in 2008, NSCC's settlement procedures have required AIP Settling Banks to affirmatively acknowledge or refuse to settle in the same manner as required by Settling Banks.

<sup>17</sup> Id.

<sup>18</sup> A Settling Bank that is a Member and settles solely for its own accounts may opt to not acknowledge its settlement balance. Section D of Procedure VIII, supra note 3.

remove the settlement balance of the unresponsive NSCC Settling Bank from the NSS file in order to allow the processing of the rest of the NSS file for the other NSCC Settling Banks that are part of the NSS file. If NSCC does not remove the settlement balance of the unresponsive NSCC Settling Bank from the NSS file, then the NSS file cannot be created and settlement cannot be completed for the other NSCC Settling Banks that are part of the NSS file. As such, today, NSCC may need to remove the settlement balance of the unresponsive NSCC Settling Bank from the NSS file in order to submit the NSS file and complete settlement for the other NSCC Settling Banks that are part of the NSS file, thus potentially delaying settlement of the NSS file. Such potential delay would arise from the time needed to remove the figure of the unresponsive NSCC Settling Bank and then re-establish the NSS file. Moreover, with respect to the NSCC Members or AIP Non-Member Funds who were using the particular NSCC Settling Bank, NSCC would need to settle individually with those NSCC Members or AIP Non-Member Funds via the Fedwire Funds Service, which also presents the possibility of a delay because of the time it may take to complete this process individually with each affected NSCC Member.

NSCC is proposing to implement a passive acknowledgment process for EOD Settlement and AIP Settlement to address the situation discussed above where an NSCC Settling Bank is unresponsive and cannot be reached. This would allow NSCC to submit the NSS file (through the Settlement Agent) for NSS processing more promptly, and thereby allow settlement to be completed for the other NSCC Settling Banks that are part of the NSS file.

Until 2016, DTC's rules also required settling banks that settled on behalf of DTC Participants for DTC Settlement to affirmatively acknowledge or to refuse to settle. In 2016, DTC amended the Settlement Service Guide to provide for a passive acknowledgment process, such that a settling bank which does not timely affirmatively

acknowledge its settlement balance or refuse to settle would be deemed to have acknowledged its settlement balance.<sup>19</sup> In 2020, Fixed Income Clearing Corporation (“FICC”) also filed a rule filing to provide for similar passive acknowledgment process for FICC settling banks.<sup>20</sup> The passive acknowledgment process being proposed by NSCC is the same process that DTC and FICC have put in place.

### ***NSCC Passive Acknowledgment Process***

NSCC proposes to introduce a settling bank passive acknowledgment process in the Rules for Settling Banks and for AIP Settling Banks to manage the collection or payment of settlement amounts in the event that any Settling Bank or AIP Settling Bank does not timely provide an affirmative acknowledgment or refusal with respect to its settlement payment amounts by the settlement acknowledgment deadline. If a Settling Bank or an AIP Settling Bank does not acknowledge or refuse its settlement amount by the settlement acknowledgment deadline and NSCC is unable to establish contact with the Settling Bank or AIP Settling Bank, NSCC proposes to deem the Settling Bank’s or AIP Settling Bank’s final settlement balance as acknowledged. Through this proposed passive acknowledgment process, NSCC will assume that the Settling Bank or AIP Settling Bank that has failed to acknowledge its figures or refused to settle by the settlement acknowledgment deadline, intends to settle for its respective NSCC Members or AIP Non-Member Funds. The Settling Bank’s or AIP Settling Bank’s final debit settlement balance or final credit settlement balance would then be debited from or credited to its account at the Federal Reserve Bank through the NSS process.

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<sup>19</sup> See Securities Exchange Act Release No. 76887 (January 13, 2016), 81 FR 3218 (January 20, 2016) (SR-DTC-2015-011).

<sup>20</sup> See Securities Exchange Act Release No. 89593 (August 18, 2020), 85 FR 52164 (August 24, 2020) (SR-FICC-2020-006).



Even with the implementation of the proposed passive acknowledgment process, NSCC must retain the discretion to remove the settlement balance of an NSCC Settling Bank from the NSS file.<sup>21</sup> In other words, currently, NSCC may remove the NSCC Settling Bank's figure from the NSS file in the situation where an NSCC Settling Bank is unresponsive and cannot be reached. Under the proposal, the need for NSCC to do so would arise in the event that an NSCC Settling Bank advises the Settlement Agent that it cannot yet determine whether to acknowledge or refuse. In such a circumstance, passive acknowledgment would not apply (as described below); however, as it gets closer to the NSS processing time, NSCC may need to remove the NSCC Settling Bank's settlement balance from the NSS file in order to allow settlement to be completed for the other NSCC Settling Banks that are part of the NSS file and have affirmatively or passively acknowledged their figure. NSCC is proposing to codify its ability to remove the settlement balance of the NSCC Settling Bank from the NSS file. As NSCC would be codifying this current practice with this proposed rule change, this proposed rule change would not change the current settlement process of NSCC Settling Banks that are excluded from the NSS file. This proposed change is discussed below.

(i) **Proposed change to introduce passive acknowledgment process for NSCC Settling Banks**

*Proposed Passive Acknowledgment Process*

NSCC proposes to establish an "Acknowledgment Cutoff Time" for EOD Settlement and an "AIP Acknowledgment Cutoff Time" for AIP Settlement after which NSCC would apply the passive acknowledgment process if it is unable to reach an NSCC Settling Bank. Since EOD Settlement is centralized with DTC Settlement, the Acknowledgment Cutoff Time will be the Acknowledgment Cutoff Time established in

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<sup>21</sup> This practice is currently not codified in the Rules.

the Settlement Service Guide for DTC Settlement.<sup>22</sup> To conform with current practice, the “Acknowledgment Cutoff Time” would be defined in Rule 1 as the time set forth as the Acknowledgment Cutoff Time in the DTC Settlement Service Guide which can be found on NSCC’s Website at <https://www.dtcc.com/legal/rules-and-procedures>. The “AIP Acknowledgement Cutoff Time” would be defined in Rule 1, with respect to each AIP Settling Bank regarding AIP Settlement of AIP Debit Balances and AIP Credit Balances, as the later of (i) 30 minutes after the AIP Settling Bank has been notified of its AIP Debit Balance or AIP Credit Balance (or, the new AIP Debit Balance or new AIP Credit Balance, if readjusted as set forth herein), as applicable, and (ii) 30 minutes prior to the settlement deadline established by NSCC. NSCC would add a statement that it would post the settlement deadlines for AIP Settlement on the NSCC Website which it currently does.

If an NSCC Settling Bank does not submit either (1) an acknowledgment that it will settle the settlement balance with NSCC or (2) a refusal to pay the settlement balance by the Acknowledgment Cutoff Time or the AIP Acknowledgment Cutoff Time, as applicable, and has not been in contact with the Settlement Agent, then the Settlement Agent would attempt to contact the NSCC Settling Bank. If the Settlement Agent is able to contact the NSCC Settling Bank and it notifies the Settlement Agent that the NSCC Settling Bank cannot, at that time, submit its acknowledgment or refusal to pay its settlement balance and that it needs more time, then the NSCC Settling Bank would not be deemed to have acknowledged that it will settle such settlement balance with NSCC. However, if the NSCC Settling Bank cannot be reached, then the NSCC Settling Bank

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<sup>22</sup> The Acknowledgment Cutoff Time established in the Settlement Service Guide is currently the later of 4:15 p.m. and the time that is 30 minutes after net-net settlement balances are first made available. Page 19 of the Settlement Service Guide, supra note 15. For AIP, the current deadline for debit acknowledgment in NSCC’s settlement procedures is 9:30 a.m. and the current deadline for credit acknowledgment is 12:30 p.m. Such times are posted on NSCC’s website.

would be deemed to have acknowledged that it will settle such settlement balance with NSCC.

The passive acknowledgment process described herein would also apply in situations where an NSCC Settling Bank is provided with a new settlement balance after such NSCC Settling Bank's refusal to pay the settlement balance for one or more NSCC Members or AIP Non-Member Funds.

NSCC would also revise the Rules to state that each NSCC Settling Bank must ensure that it maintains accurate contact details with the Settlement Agent so that the Settlement Agent may contact the NSCC Settling Bank regarding this settlement process and any settlement issues.

*Proposed Changes to Rule 1, Rule 55 and Procedure VIII*

The proposed passive acknowledgment process will require changes to Rule 1, Rule 55 with respect to AIP Settlement and Procedure VIII with respect to EOD Settlement. Specifically, NSCC proposes to add proposed new defined terms "Acknowledgment Cutoff Time" and "AIP Acknowledgment Cutoff Time" in Rule 1 as discussed above. NSCC proposes to add a phrase at the end of new subsection (b) of Section D.1. of Procedure VIII that would apply to Settling Banks that settle solely for their own accounts to state that if they choose to opt out of having to acknowledge their settlement balance, new subsections (c) and (e) (described below) of Section D.1. of Procedure VIII would not apply to them.<sup>23</sup>

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<sup>23</sup> Proposed subsections (c) and (e) describe the proposed passive acknowledgment process. As described above, if a Settling Bank that is a Member settles solely for its own account opts to not acknowledge its own settlement balance, the passive acknowledgment process would not apply to such Settling Banks because such Settling Banks cannot refuse to settle for their own accounts. For operational convenience, Settling Banks that are Members may choose to not acknowledge their own settlement balance because they cannot refuse to settle for their own accounts. Members are also required to be Participants at DTC and the Settlement Service Guide provides that a DTC Participant that acts as its own Settling Bank may not refuse to settle for itself. See p. 18 of the Settlement Service Guide, supra, note 15. As set forth below, NSCC is proposing to codify

NSCC proposes to add a new subsection (c) in Section 9 of Rule 55 and in Section D.1 of Procedure VIII to provide that if the NSCC Settling Bank does not acknowledge its settlement balance or notify the Settlement Agent that it refuses to settle, then at the AIP Acknowledgment Cutoff Time or Acknowledgment Cutoff Time, as applicable, the NSCC Settling Bank is deemed to have acknowledged its settlement balance.

NSCC proposes to amend the language in new subsection (d) of Section D.1 of Procedure VIII to delete the requirement that Settling Banks must send a message immediately after sending a refusal message acknowledging the new amount if it is a credit and its intention to settle if it is debit and instead provide that if the Settling Bank sends refusal messages, it must acknowledge to the Settlement Agent by the Acknowledgment Cutoff Time, its new settlement balance and its intention to settle by the settlement deadline. In addition, a sentence would be added stating that the new subsection (c) would apply with respect to the new settlement balances of the Settling Bank that sent refusal messages. Similar language would be added as a new subsection (d) of Section 9 in Rule 55 with respect to AIP Settling Banks and AIP Settlement.

NSCC proposes to amend Section 9 of Rule 55 and Section D.1 of Procedure VIII to add new subsection (e) which would provide that the Settlement Agent would attempt to contact the NSCC Settling Bank if no acknowledgment or notice of refusal to settle on behalf of one or more NSCC Member or AIP Non-Member Fund, as applicable, for which it is designated as the NSCC Settling Bank is received by the AIP Acknowledgment Cutoff Time or Acknowledgment Cutoff Time, as applicable. The new subsections would provide that if (i) the Settlement Agent is able to contact the NSCC

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the practice in the Rules with respect to Members by adding a statement that a Settling Bank that is a Member may not refuse to settle for itself in Section D.1 of Procedure VIII. Therefore, proposed subsections (c) and (e) would not apply to such Settling Banks.

Settling Bank and (ii) the NSCC Settling Bank notifies the Settlement Agent that it cannot, at that time, acknowledge or refuse their settlement balance, then the NSCC Settling Bank will not be deemed to have acknowledged its settlement balance. The new subsections would provide that if the NSCC Settling Bank cannot be reached, the NSCC Settling Bank will be deemed to have acknowledged its settlement balance. In the new subsection (e) of Section D.1 of Procedure VIII, NSCC would also state that the new proposed subsection (e) would not apply to a Settling Bank that settles solely for its own account and opts not to acknowledge its settlement balance.<sup>24</sup> As discussed in more detail below, the new subsection (e) of Section 9 of Rule 55 and Section D.1 of Procedure VIII would also contain a provision relating to NSCC's ability to exclude an NSCC Settling Bank's settlement balances from the NSS file if the NSCC Settling Bank has not acknowledged or been deemed to have acknowledged its settlement balance under certain circumstances.

NSCC proposes to add a new subsection (g) of Section 9 in Rule 55 and a new subsection (g) of Section D.1 of Procedure VIII which would provide the Settlement Agent uses the most recent contact information provided by the NSCC Settling Bank to the Settlement Agent. These proposed subsections would also include a requirement that each NSCC Settling Bank maintains up-to-date and accurate contact details with the Settlement Agent on an ongoing basis.

NSCC proposes to delete language in Section D.1 of Procedure VIII that states that if NSCC has not received funds from the Settling Bank with a net-net debit and the Settling Bank has not sent refusal messages and/or an acknowledgment message to NSCC by the deadline, NSCC begins failure to settle procedures in respect to the Settling

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<sup>24</sup> Section D.1 of Procedure VIII provides that Settling Bank that is a Member and settles solely for its own accounts may opt to not acknowledge its settlement balance. Section D.1 of Procedure VIII, supra, note 3.

Bank at this time. NSCC is proposing to delete this language to reflect the new passive acknowledgment process.

(ii) **Amend the definition of “AIP Settling Bank” to correspond with the definition of “Settling Bank” and remove AIP Settling Bank Only Member as a membership category.**

The proposed change would amend the definition of AIP Settling Bank to correspond with the definition of Settling Bank and remove AIP Settling Bank Only Member as a membership category. AIP Settling Bank is currently defined as either (i) an AIP Member which is a bank or trust company meeting certain criteria or (ii) an AIP Settling Bank Only Member meeting certain criteria and which have entered into an effective Appointment of AIP Settling Bank and AIP Settling Bank Agreement. Since the inception of AIP, AIP Members have used (a) Members that are banks or trust companies meeting certain criteria and (b) Settling Bank Only Members meeting certain criteria and which have entered into Appointments of AIP Settling Bank and AIP Settling Bank Agreements as AIP Settling Banks. Since the inception of AIP, there have been no AIP Members that have acted as AIP Settling Banks and there have been no entities that have become AIP Settling Bank Only Members.

The proposed change would amend the definition of AIP Settling Bank in Rule 1 to provide that an AIP Settling Bank would be either (i) a Member which is a bank or trust company meeting certain criteria or (ii) a Settling Bank Only Member meeting certain criteria and which has entered into an effective Settling Bank Agreement which would be identical to the definition of Settling Bank. The definition of Settling Bank Agreement distinguishes between Settling Banks and AIP Settling Banks by indicating that in the Settling Bank Agreement entered into by an AIP Settling Bank, the AIP Settling Bank undertakes to perform settlement services for the AIP Member or the AIP Non-Member Fund which is a party thereto whereas Settling Banks make such undertakings with respect to Members and Limited Members that are not AIP Members.

In addition, NSCC would delete the definition of AIP Settling Bank Only Member in Rule 1 and remove the term throughout the Rules, including a description of AIP Settling Bank Only Members in Section 2.(ii)(i) of Rule 2. NSCC would also change the reference to 2.(ii)(i) of Rule 2 in the definition of AIP Settling Bank to 2.(ii)(f) of Rule 2 to reflect that is referring to a Member which would qualify as a Settling Bank Only Member rather as an AIP Settling Bank Only Member. In addition, NSCC would amend Section 5 of Rule 3 to provide that NSCC shall maintain a list of Members and Settling Bank Only Members that have agreed to act as AIP Settling Banks to reflect that AIP Members would use Members and Settling Bank Only Members as AIP Settling Banks, as discussed above. Section 1 of Rule 55 would also be amended to reflect that an AIP Settling Bank shall be a Member or a Settling Bank Only Member. Addendum B would be amended to remove the references to AIP Settling Bank Only Members and to delete Section 11 which relates to membership requirements for AIP Settling Bank Only Members.

**(iii) Codify certain settlement processes**

The proposed rule change would codify certain settlement processes that are currently being used by NSCC.

Proposed change to codify certain settlement processes for AIP Settlement

Currently there are a number of settlement processes used in AIP Settlement that are not explicitly set forth in the Rules. These processes are the same processes that are set forth in the Section D.1 of Procedure VIII with respect to EOD Settlement and would be added in Section 9 of Rule 55 as follows:

- A statement that DTC will act as Settlement Agent for NSCC and the AIP Settling Banks in a new subsection (b)
- A requirement that AIP Settling Banks must acknowledge by the AIP Acknowledgment Cutoff Time via the terminal system their AIP Debit

Balance and their AIP Credit Balance and their intention to settle or refusal to settle by the AIP Acknowledgment Cutoff Time in a new subsection (b); as proposed above, there would be an AIP Acknowledgment Cutoff Time with respect to AIP Settlement for the AIP Debit Balances and the AIP Credit Balances.

- A statement that if the AIP Settling Bank has an AIP Debit Balance, then the AIP Settling Bank's account at the Federal Reserve Bank will be debited; if the AIP Settling Bank has an AIP Credit Balance, then the AIP Settling Bank's Federal Reserve Bank account will be credited in new subsection (c)
- A statement that if the AIP Settling Bank sends a refusal message it must acknowledge its new AIP Debit Balance and AIP Credit Balance by the AIP Acknowledgment Cutoff Time via the terminal system and its intention to settle in new subsection (d)
- A statement that the AIP Settling Bank that cannot send an acknowledgment or refusal message may contact the Settlement Agent and instruct the Settlement Agent to act on its behalf in new subsection (f)

Proposed change to allow NSCC to exclude NSCC Settling Bank balance from NSS file

The proposed rule change would provide that if (1) passive acknowledgment does not apply because the NSCC Settling Bank has notified the Settlement Agent that it cannot yet acknowledge or refuse its settlement balance and (2) the payment deadline established by NSCC is approaching, then NSCC would have the ability to exclude the NSCC Settling Bank's settlement balance from the NSS file. This would allow settlement to be completed for the other NSCC Settling Banks that are part of the NSS file. As described above, as it gets closer to the payment deadline, NSCC may need to remove the NSCC Member's balance from the NSS file in order to allow settlement to be completed for the other NSCC Settling Banks that are part of the NSS file. As NSCC



would be codifying its current practice with this proposed rule change, this proposed change would not change the current settlement process of NSCC Settling Banks that are excluded from the NSS file.

This proposed change is reflected in the second paragraph of new subsection (e) of Section 9 of Rule 55 and new subsection (e) of Section D.1 of Procedure VIII.

**(iv) Proposed technical, clarifying and conforming changes**

NSCC is proposing to make the following technical, clarifying and conforming changes in the Rules to better clarify the meaning of certain provisions and to be consistent with other provisions in the Rules:

- Remove the space after “Section 2.” in the new proposed reference to “Section 2. (ii)(f)” in two places in the definition of AIP Settlement Bank in Rule 1 for clarity
- Add a definition of “FRB” as the Board of Governors of the Federal Reserve System and each Federal Reserve Bank, as appropriate, to reflect the usage of FRB in the Rules
- Add a definition of FRBNY as the Federal Reserve Bank of New York, to reflect the usage of FRBNY in the Rules
- Change the reference of “2. (ii)(j)” to “2.(ii)(i)” in the definition of Investment Manager/Agent Member in Rule 1 to reflect the proposed renumbering of that section
- Add AIP Settling Banks in the definition of Settlement Agent in Rule 1 to clarify that the Settlement Agent also acts on behalf of AIP Settling Banks with respect to AIP Settlement
- Add quotation marks to TPP Member in the definition of Third Party Provider Member to conform usage of quotation marks in other defined terms in the Rules

- Change the reference of “2. (ii)(k)” to “2.(ii)(j)” in the definition of Third Party Provider Member in Rule 1 to reflect the proposed renumbering of that section
- Renumber Sections 2.(ii)(j) and 2.(ii)(k) to reflect the deletion of AIP Settling Bank Only Member in Section 2.(ii)(i)
- Add “Rule 55” in Section 7(a) of Rule 53 to acknowledge that certain AIP settling processes are set forth in Rule 55
- Add subsection references to Section 9 of Rule 55 for clarity
- Replace “the Procedures” with “Section 9 above” in Section 10 of Rule 55 to reflect that the manner and time specified for AIP Refusal is set forth in Section 9 of Rule 55
- Change “Refusal” to “AIP Refusal” in Sections 10, 11 and 12 of Rule 55 to reflect the proper defined term for refusals with respect to AIP Settlement
- Add “or the Settlement Agent” in two places in Section 10 of Rule 55 to reflect that the bank used for settlement and the manner of payment of settlement may be specified by NSCC or the Settlement Agent
- Remove “provided in the Procedures” and “in the Procedures” and add “specified in accordance with settlement procedures adopted by the Corporation or the Settlement Agent” in Section 10 of Rule 55 to reflect that the bank account and manner of payment may be specified in settlement procedures adopted by NSCC or the Settlement Agent
- Replace “net debit” and “debit balance” with “AIP Debit Balance” in Section 10 of Rule 55 to reflect the existing defined term
- Add “settlement” before “procedures” in Section 10 of Rule 55 to clarify that the reference is to settlement procedures

- Change “Settling Bank” to “AIP Settling Bank” in Section 11 of Rule 55 to reflect the proper defined term for settling banks with respect to AIP Settlement
- Change “Settling AIP Bank” to “AIP Settling Bank” in Section 12 of Rule 55 to reflect the proper defined term
- Add a defined term “Settlement Member” in new subsection (a) in Section D.1 of Procedure VIII which would be a Member, Mutual Fund/Insurance Service Member, Insurance Carrier/Retirement Service Member or Fund Member for which a Settling Bank is the designated Settling Bank to replace the reference to “each of its participant’s accounts”
- Add a defined term “Settlement Balance” in new subsection (a) in Section D.1. of Procedure VIII which would be the Settling Bank’s final settlement balance and replace the phrase “settlement figure” with “settlement balance” to reflect usage elsewhere when referring to the settlement balance
- Replace “NSCC” with “Settlement Agent” in new subsection (b) in D.1 of Procedure VIII to reflect that the Settling Banks acknowledge to the Settlement Agent their intention to settle
- Replace “settlement figures” with “Settlement Balances” in new subsection (b) in Section D.1. of Procedure VIII to reflect the new defined term
- Replace the list of Members and Limited Members that may use a Settling Bank with the new defined term “Settlement Members” in new subsection (b) in Section D.1 of Procedure VIII to reflect the new defined term.
- Remove the sentence in new subsection (b) in D.1 of Procedure VIII that states that an acknowledgment must be sent even if the Settling Bank has wired the amount of its net net debit prior to the cut off time because the statement is unnecessary as it is unlikely that situation would occur

- Add a statement in new subsection (b) in D.1 of Procedure VIII to codify current practice set forth in the Settlement Service Guide with respect to Participants that applies to Members that a Settling Bank that is a Member may not refuse to settle for itself
- Revise new subsection (f) in Section D.1. of Procedure VIII to remove outdated references to NSCC, the telephone as the only means of contact and a number for Settlement Operations in the membership directory to reflect the current procedures such that a Settling Bank that cannot send an acknowledgment or refusal message may contact the Settlement Agent and instruct the Settlement Agent act on its behalf
- Replace “NSCC” with “Settlement Agent” in two places in new subsection (h) in Section D.1 of Procedure VIII to reflect that Settling Banks send their acknowledgments to the Settlement Agent
- Replace “this time” with “the settlement deadline” in the new subsection (h) in Section D.1 of Procedure VIII to clarify that it is referring to the settlement deadline
- Replace the list of Members and Limited Members for which a Settling Bank may send a refusal with “Settlement Member” to reflect the proposed new defined term in the new subsection (i) in Section D.1 of Procedure VIII
- Replace “Corporation” with “Settlement Agent” in new subsection (j) in Section D.1 of Procedure VIII to reflect that the Settlement Agent will receive funds and initiate payments to Settling Banks
- Replace “Federal Reserve Bank’s National Settlement Service” with “NSS” in Section D.2. of Procedure VIII to reflect that NSCC is proposing to move the defined term NSS earlier in the Rules

- Capitalize “balance” in Section D.2. of Procedure VIII to reflect the new defined term Settlement Balance
- Make “Settlement” lowercase in Section D.3 of Procedure VIII to reflect that Settlement is not a defined term
- Add the word “operations” before “department” in Section D.3 of Procedure VIII to reflect that the name of the department is the settlement operations department
- Capitalize “settlement balance” in Section D.3 of Procedure VIII to reflect the new defined term

## 2. Statutory Basis

NSCC believes this proposal is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to a registered clearing agency. Specifically, NSCC believes this proposal is consistent with Section 17A(b)(3)(F) of the Act.<sup>25</sup>

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions.<sup>26</sup> The EOD Settlement and AIP Settlement processes at NSCC reflect cash debits and credits of payments that are associated with securities transactions that will ultimately be subject to securities settlement. NSCC believes that failure by an NSCC Settling Bank to timely acknowledge that it will settle its settlement balance with NSCC or to refuse to pay its settlement balance creates uncertainty with respect to the timely completion of settlement at NSCC. NSCC believes that the introduction of the proposed passive acknowledgment process described in Item II.(A)1.(i) above would help promote the

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<sup>25</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>26</sup> Id.

prompt and accurate clearance and settlement of securities transactions in circumstances where an NSCC Settling Bank has not responded by the Acknowledgment Cutoff Time or the AIP Acknowledgment Cutoff Time, as applicable, and cannot be reached by the Settlement Agent. In such circumstances, as described above, NSCC would deem that such NSCC Settling Bank has acknowledged that it will settle settlement balances. This would enable NSCC to submit the NSS file (through the Settlement Agent) as is for processing in a timely manner, and thereby enhance certainty with respect to the timely completion of settlement. Timely completion of such settlement at NSCC for as many members as possible promotes the prompt and accurate clearance and settlement of securities transactions as a general matter, because the EOD Settlement and AIP Settlement processes at NSCC involve debits and credits that will ultimately be subject to securities settlement. As such, NSCC believes the proposed change to introduce the passive acknowledgment process described in Item II.(A)1.(i) above is designed to promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.<sup>27</sup>

NSCC also believes that the proposal to (a) amend the definition of “AIP Settling Bank” to correspond with the definition of “Settling Bank” and remove AIP Settling Bank Only Member as a membership category described in Item II.(A)1.(ii) above and (b) codify certain settlement processes for AIP Settlement described in Item II.(A)1.(iii) above are designed to promote the prompt and accurate clearance and settlement of securities transactions.<sup>28</sup> As discussed above settling banks used for AIP Settlement have historically been Members or Settling Bank Only Members and not AIP Members or AIP Settling Bank Only Members. In addition, there have been no entities that have become

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<sup>27</sup> Id.

<sup>28</sup> Id.

AIP Settling Bank Only Members. The existing processes related to AIP Settlement that are being added as described in Item II.(A)1.(iii) above are existing processes in AIP Settlement. NSCC believes that in each case making such provisions explicit in the Rules is consistent with Section 17(A)(b)(3)(F) of the Act<sup>29</sup> because such changes would enhance the clarity and transparency of the Rules with respect to AIP Settlement. By enhancing the clarity and transparency of the Rules, the proposed changes would allow AIP Members and AIP Non-Member Funds to more efficiently and effectively conduct their business in accordance with the Rules, which NSCC believes would promote the prompt and accurate clearance and settlement of securities transactions. As such, NSCC believes that the proposed changes would be consistent with Section 17A(b)(3)(F) of the Act.<sup>30</sup>

NSCC also believes that the proposal to codify NSCC's ability to exclude an NSCC Settling Bank's balance from the NSS file described in Item II.(A)1.(iii) above is designed to promote the prompt and accurate clearance and settlement of securities transactions.<sup>31</sup> If an NSCC Settling Bank notifies the Settlement Agent that it cannot yet acknowledge or refuse, NSCC would not be able to submit the NSS file (through the Settlement Agent) with that NSCC Settling Bank's settlement balance included. If the NSCC Settling Bank does not ultimately respond with either an acknowledgment or refusal, then NSCC must have the ability to exclude such NSCC Settling Bank's settlement balance from the NSS file. In this way, settlement can be completed for all other NSCC Members. Therefore, NSCC believes the proposed changes to codify NSCC's ability to exclude an NSCC Settling Bank's balance from the NSS file described

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<sup>29</sup> Id.

<sup>30</sup> Id.

<sup>31</sup> Id.

in in Item II.(A)1.(iii) above is designed to promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.<sup>32</sup>

NSCC also believes that the proposed rule changes to make the technical, clarifying and conforming changes, as described in Item II.(A)1.(iv) above, are designed to promote the prompt and accurate clearance and settlement of securities transactions by ensuring that the Rules remain clear and accurate to NSCC Members and that NSCC Members understand EOD Settlement and AIP Settlement. Having clear and accurate Rules would facilitate members' understanding of those Rules and provide members with increased predictability and certainty regarding their obligations. As such, NSCC believes these proposed changes would promote the prompt and accurate clearance and settlement of securities, consistent with Section 17A(b)(3)(F) of the Act.<sup>33</sup>

(B) Clearing Agency's Statement on Burden on Competition

NSCC does not believe that the proposed rule changes described in Item II.(A)1.(i) above to introduce the passive acknowledgment process for NSCC Settling Banks would have any impact on competition,<sup>34</sup> because the proposed passive acknowledgment process would not have an impact on the NSCC Settling Banks' current ability to timely acknowledge their settlement balances, as it is intended to address situations where an NSCC Settling Bank is not responding and cannot be reached. If an NSCC Settling Bank notifies the Settlement Agent that the NSCC Settling Bank cannot, at that time, submit its acknowledgment that it will settle its settlement balances with NSCC or its refusal to pay its settlement balances, then the NSCC Settling Bank would

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<sup>32</sup> Id.

<sup>33</sup> Id.

<sup>34</sup> 15 U.S.C. 78q-1(b)(3)(I).



not be deemed to have acknowledged that it will settle such settlement balances with NSCC. Therefore, NSCC believes that the proposed passive acknowledgment process described in Item II.(A)1.(i) above would not have any impact on competition.

NSCC also does not believe that the proposal to amend the definition of “AIP Settling Bank” to correspond with the definition of “Settling Bank” and remove AIP Settling Bank Only Member as a membership category described in Item II.(A)1.(ii) above would have any impact on competition<sup>35</sup> because settling banks used for AIP Settlement have historically been Members or Settling Bank Only Members and not AIP Members or AIP Settling Bank Only Members. In addition, there have been no entities that have become AIP Settling Bank Only Members. As such NSCC does not believe the proposed changes to (a) amend the definition of “AIP Settling Bank” to correspond with the definition of “Settling Bank” and remove AIP Settling Bank Only Member as a membership category described in Item II.(A)1.(ii) above would affect the rights or obligations of NSCC or NSCC Members or have any impact on competition.

NSCC also does not believe that the proposed changes to exclude an NSCC Settling Bank’s balance from the NSS file, as described in Item II.(A)1.(iii) above, would have any impact on competition<sup>36</sup> because this proposal, if invoked, would require the affected NSCC Settling Bank to send payment to NSCC by wire, which is an alternate form of payment already available to the NSCC Settling Banks. NSCC believes that ready availability of a reasonable payment alternative would result in the rights and obligations of the NSCC Settling Banks not being adversely affected. As such, NSCC does not believe that the proposed changes to exclude an NSCC Settling Bank’s balance

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<sup>35</sup> Id.

<sup>36</sup> Id.

from the NSS file, as described in Item II.(A)1.(iii) above, would have any impact on competition.

NSCC also does not believe that the proposed rule changes to codify the AIP Settlement processes described in Item II.(A)1.(iii) or to make the technical, clarifying and conforming changes described in Item II.(A)1.(iv) above would have an impact on competition.<sup>37</sup> These changes would simply provide additional clarity within the Rules and not affect NSCC Members' rights and obligations.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

NSCC has not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b-4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b-4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, available at <https://www.sec.gov/regulatory-actions/how-to-submit-comments>. General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at [tradingandmarkets@sec.gov](mailto:tradingandmarkets@sec.gov) or 202-551-5777.

NSCC reserves the right not to respond to any comments received.

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Id.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NSCC-2021-013 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

All submissions should refer to File Number SR-NSCC-2021-013. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website

(<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NSCC and on DTCC's website (<http://dtcc.com/legal/sec-rule-filings.aspx>). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NSCC-2021-013 and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>38</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021-26531 Filed: 12/7/2021 8:45 am; Publication Date: 12/8/2021]

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<sup>38</sup> 17 CFR 200.30-3(a)(12).